



US Army Corps
of Engineers
Alaska District

Regulatory Branch (1145)
8800 Glacier Highway, Suite 106
Juneau, Alaska 99801-8079

Public Notice of Application for Permit

PUBLIC NOTICE DATE: November 01, 2006

EXPIRATION DATE: December 01, 2006

REFERENCE NUMBER: POA-1983-20-N

WATERWAY: Lemon Creek

Interested parties are hereby notified that an application has been received for a Department of the Army permit for certain work in waters of the United States (U.S.) as described below and shown on the attached plan.

APPLICANT: Mr. Ralph Horecny, Post Office Box 211474, Auke Bay, Alaska 99821.

AGENT: Mr. Jan Van Dort, 10518 Fox Farm Trail, Juneau, Alaska 99801, telephone (907) 789-3441, FAX (907) 789-4084, or by email at jvandort@gci.net.

LOCATION: The proposed project is located in Section 34, T. 40 S., R. 66 E., Copper River Meridian; Latitude 58.359° N., Longitude 134.488 W.; on Parcel 2, Mendota Park Subdivision, U.S.S. 204, Plat #2005-13, adjacent to Anka Street, Juneau, Alaska.

PURPOSE: Mr. Ralph Horecny is proposing a gravel mining operation to excavate up to 200,000 cubic yards of sand and gravel from 9.55 acres of the Lemon Creek streambed, utilizing tracked hydraulic excavators and dump trucks during low water flow periods. The proposed project would place fill into waters of the U.S., including wetlands, for the purpose of installing a dike in Lemon Creek to divert the creek waters around a proposed gravel mining operation.

WORK: The proposed project would entail the placement of approximately 1,575 cubic yards of various fill materials obtained on-site to construct an access haul ramp and road to provide vehicle access to the site, and to construct a temporary berm to contain and divert the waters of Lemon Creek around the proposed gravel mining operation while work is in progress. All work would be accomplished as described in the attached plans and drawings, sheets 1-5, October 24, 2006.

- a. Install approximately 100 cubic yards of fill materials into approximately 0.02 acres of waters of the U.S., below the OHW of Lemon Creek, to construct a temporary access ramp and haul road to provide vehicle access to the Lemon Creek property.
- b. Install approximately 1,475 cubic yards of various fill materials obtained on site, into approximately 0.45 acres of waters of the U.S., below the OHW of Lemon Creek, to construct a temporary berm to divert the flow of Lemon Creek around a proposed gravel mining operation area.

ADDITIONAL INFORMATION: For additional information about this proposed project, please contact the authorized agent, Mr. Jan Van Dort, 10518 Fox Farm Trail, Juneau, Alaska 99801, at (907) 789-3441, FAX (907) 789-4084, or by email at jvandort@gci.net.

- a. The gravel and sand materials would be hauled away and processed off-site at an upland location.
- b. Once the gravel mining operation has been completed, the upper portion of the temporary berm would be removed, allowing the waters of Lemon Creek back into the main channel. The remaining portion of the temporary berm would be washed away by the flows of Lemon Creek.
- c. The temporary access ramp and haul road materials would be removed utilizing an excavator, and these materials would be hauled away.

MITIGATION: As a result of early project planning, the applicant has incorporated into the proposed project the following mitigation efforts to reduce impacts to the aquatic environment: Proposed installing the water diversion dike to divert the creek waters around the proposed mining site, so that the gravel mining work would be accomplished in the dry, which should reduce the amount of silt and suspended sediments being released into the waters due to the mining activities.

WATER QUALITY CERTIFICATION: A permit for the described work will not be issued until a certification, or waiver of certification, as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

COASTAL ZONE MANAGEMENT ACT CERTIFICATION: Section 307(c)(3) of the Coastal Zone, Management Act of 1972, as amended by 16 U.S.C. 1456(c)(3), requires the applicant to certify that the described activity affecting land or water uses in the Coastal Zone complies with the Alaska Coastal Management Program. A permit will not be issued until the Office of Project Management and Permitting, Department of Natural Resources has concurred with the applicant's certification.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

CULTURAL RESOURCES: The latest published version of the Alaska Heritage Resources Survey (AHRS) has been consulted for the presence or absence of historic properties, including those listed in or eligible for inclusion in the National Register of Historic Places. There are no listed or eligible properties in the vicinity of the worksite. Consultation of the AHRS constitutes the extent of cultural resource investigations by the District Engineer at this time, and he is otherwise unaware of the presence of such resources. This application is being coordinated with the State Historic Preservation Office (SHPO). Any comments SHPO may have concerning presently unknown archeological or historic data that may be lost or destroyed by work under the requested permit will be considered in our final assessment of the described work.

TRIBAL CONSULTATION: The Alaska District fully supports tribal self-governance and government-to-government relations between the Federal government and Federally recognized Tribes. This notice invites participation by agencies, Tribes, and members of the public in the Federal decision-making process. In addition, Tribes with protected rights or resources that could be significantly

affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the Alaska District on a government-to-government basis. Views of each Tribe regarding protected rights and resources will be accorded due consideration in this process. This Public Notice serves as notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Engineer during the public comment period.

ENDANGERED SPECIES: No threatened or endangered species are known to use the project area.

Preliminarily, the described activity will not affect threatened or endangered species, or modify their designated critical habitat, under the Endangered Species Act of 1973 (87 Stat. 844). This application is being coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS). Any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

ESSENTIAL FISH HABITAT: The proposed work is being evaluated for possible effects to Essential Fish Habitat (EFH) pursuant to the Magnuson Stevens Fishery Conservation and Management Act of 1996 (MSFCMA), 16 U.S.C. et seq and associated Federal regulations found at 50 CFR 600 Subpart K. The Alaska District includes areas of EFH as Fishery Management Plans. We have reviewed the January 20, 1999, North Pacific Fishery Management Council's Environmental Assessment to locate EFH area as identified by the NMFS.

We have determined that the described activity may adversely affect EFH. The proposed fill placement work may affect approximately 0.5 acres of EFH for juvenile/adult salmon. This Public Notice initiates consultation requirements with the NMFS under the MSFCMA. We have insufficient information at this time to assess the cumulative effects of the proposed work on EFH, but cumulative effects will be considered in our final assessment of the described work. Any conservation recommendations regarding EFH for Federally managed fish will also be considered in our final assessment of the described work. This proposed project may also adversely affect associated species such as major prey or predator species which are not covered by Fishery Management Plans.

SPECIAL AREA DESIGNATION: Anadromous Fish Stream, State of Alaska Waterway #10100.

The project is located between the ordinary high water mark of Lemon Creek.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The outcome of the general balancing process would determine whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur. That decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water

quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. Please contact Regulatory Specialist, Garth Zimbelman at (907) 790-4490, or by email at Garth.A.Zimbelman@poa02.usace.army.mil if further information is desired concerning this notice.

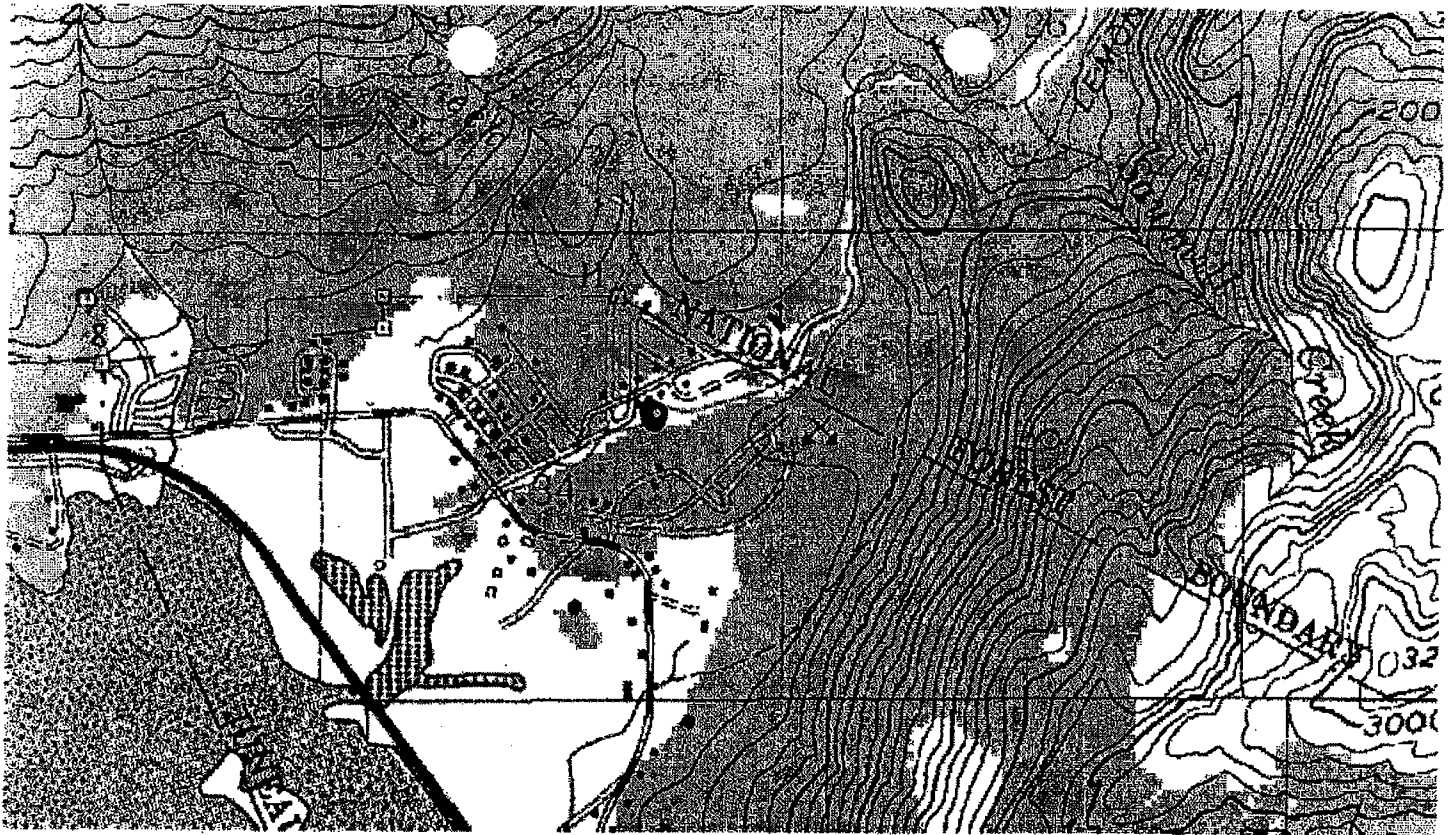
AUTHORITY: This permit will be issued or denied under the following authorities:

(X) Discharge dredged or fill material into waters of the U.S. - Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

A plan, Notice of Application for Certification of Consistency with the Alaska Coastal Management Program, and Notice of Application for State Water Quality Certification are attached to this Public Notice.

District Engineer
U.S. Army, Corps of Engineers

Attachments



USS 204 Parcel 2, Mendota Park Subdivision

Plot # 2005-13

NE 1/4 Sect - 34 T 40 S R 66 E CRM

Lat - 58.359° N Long - 134.488° W

Ralph Horecny
Lemon Creek
10/24/06

POA-1983-20-N
Sheet 1 of 5

JAN VAN DORT

Lawyer

10518 Fox Farm Trail

Juneau, Alaska 99801

(907) 789-3441 Voice : (907) 789-4084 Fax

E-mail: jvandort@gsi.net

October 24, 2006

Mr. Garth Zimbelman

Regulatory Specialist

Department of the Army

U.S. Army Engineer District, Alaska

Juneau Field Office

8800 Glacier Highway, Ste. 106

Juneau, Alaska 99801-8079

Re: Lemon Creek Channel Restoration; POA-1983-20-N

Dear Mr. Zimbelman:

I received your letter dated October 17, 2006 and apologize for any confusion found in the application. The information in this letter supersedes information submitted earlier. Anything inconsistent with it should be disregarded.

In response to your questions:

1. The berm will extend almost the entire length of the property, a distance of about 1,990 feet, and will be installed all at one time.

2. The berm will be located along and roughly parallel to the north bank of the creek. The berm will create a temporary channel lying between it and the existing north bank. All stream flow will be diverted into that channel while the work is occurring. The width of the temporary channel will be five to ten feet. This is the "channeled Lemon Creek" referred to at Section A-A on Sheet 2.

3. The transverse portion of the berm located on the upstream end of the proposed project will be leveled at the conclusion of the excavation. The portion lying parallel (parallel portion) to the north bank will be allowed to naturally erode. If the regulatory agencies prefer that this portion also be leveled, this will, of course, be done. The parallel portion of the berm will be installed progressively beginning at the downstream end by excavating and piling native material from the stream. The transverse portion of the berm will be installed progressively in the same manner beginning at the north end where it connects to the parallel portion. The volume of the material in the berm is about 950 cubic yards.

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OCT 24 2006

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Alaska District Corps of Engineers

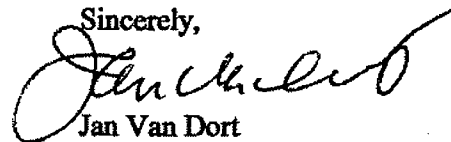
Ralph Horecny
Lemon Creek
10/24/06

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4. The bank, at the point where it intersects the temporary haul road, is approximately four to five feet high and consists of a rip-rap wall. Since the only diversion will be to the north bank, there will be no relocation of that road. The volume of the material needed to construct the portion of the temporary haul road lying below the ordinary high-water line is about 100 cubic yards.

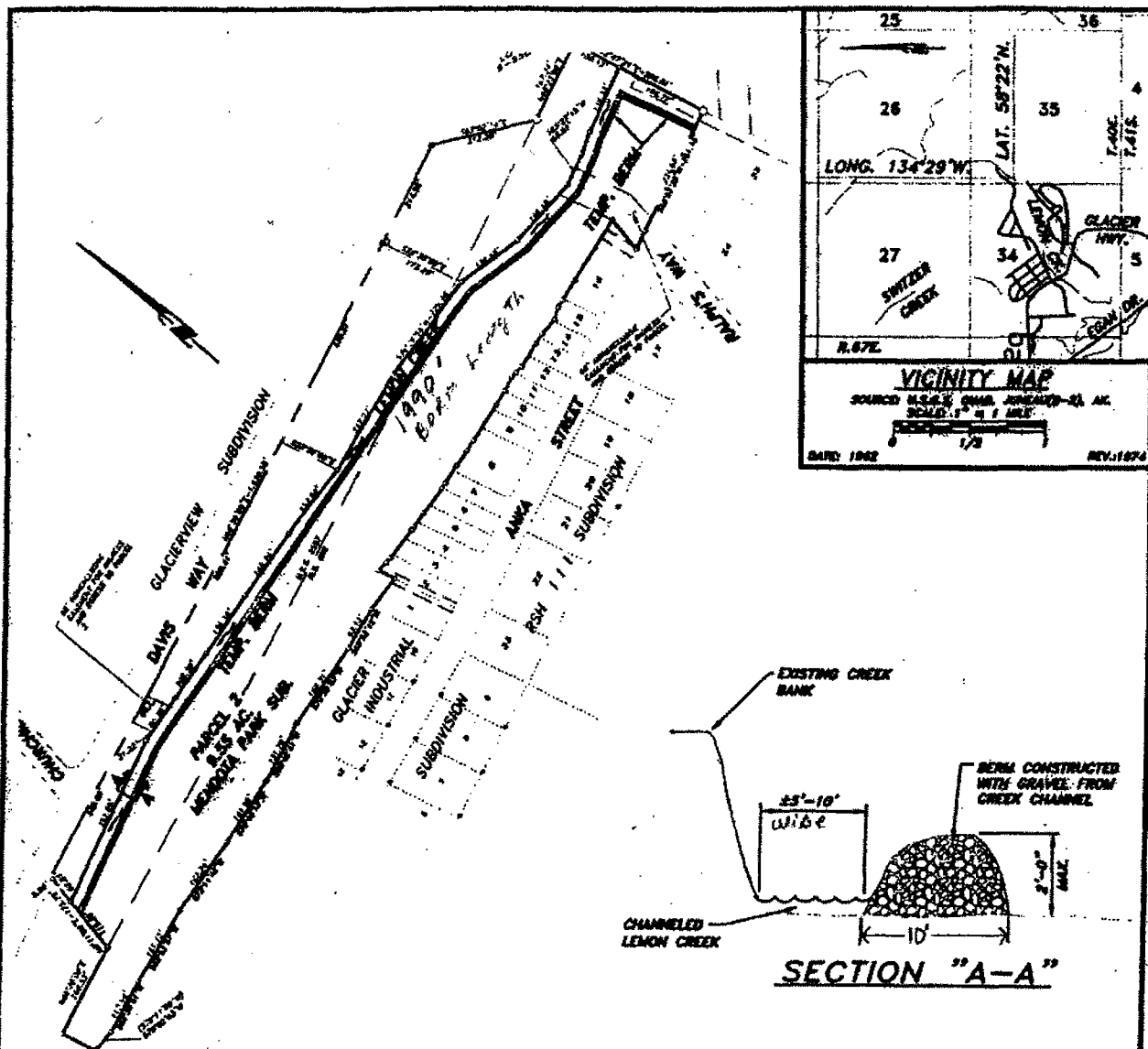
5. An alternative, which is practical from the standpoint of the applicant, is to undertake the excavation without constructing the berm or road. If the work is done in this way, there would be no discharge and therefore no ACOE permit needed. However, in the course of the substantial number of hours which I have spent with ADNR habitat biologists in Lemon Creek in connection with other work there, I have learned that there is a substantial preference for working in a dry site. Accordingly, the project has been proposed in this manner. Similarly, the project, as proposed, uses only material already present in the creek. Setting concrete jersey barriers or driving sheet piling is unnecessary and only adds to the cost of the project and disturbance to the site. The overall impact to the stream is minimized by using native material for the berm.

Sincerely,



Jan Van Dort

cc: Ralph Horecny; Kristin Dunlap, ADNR; Teri Camery, CBJ



SITE LOCATION MAP

GASTINEAU CHANNEL
TIDAL DATA-1999

HIGHEST OBSERVED.....	24.28
MHHW.....	18.28'
MHW.....	15.34'
MSL.....	8.58'
MTL.....	8.48'
MLW.....	1.59'
MLLW.....	0.00'
LOWEST OBSERVED.....	-5.46'

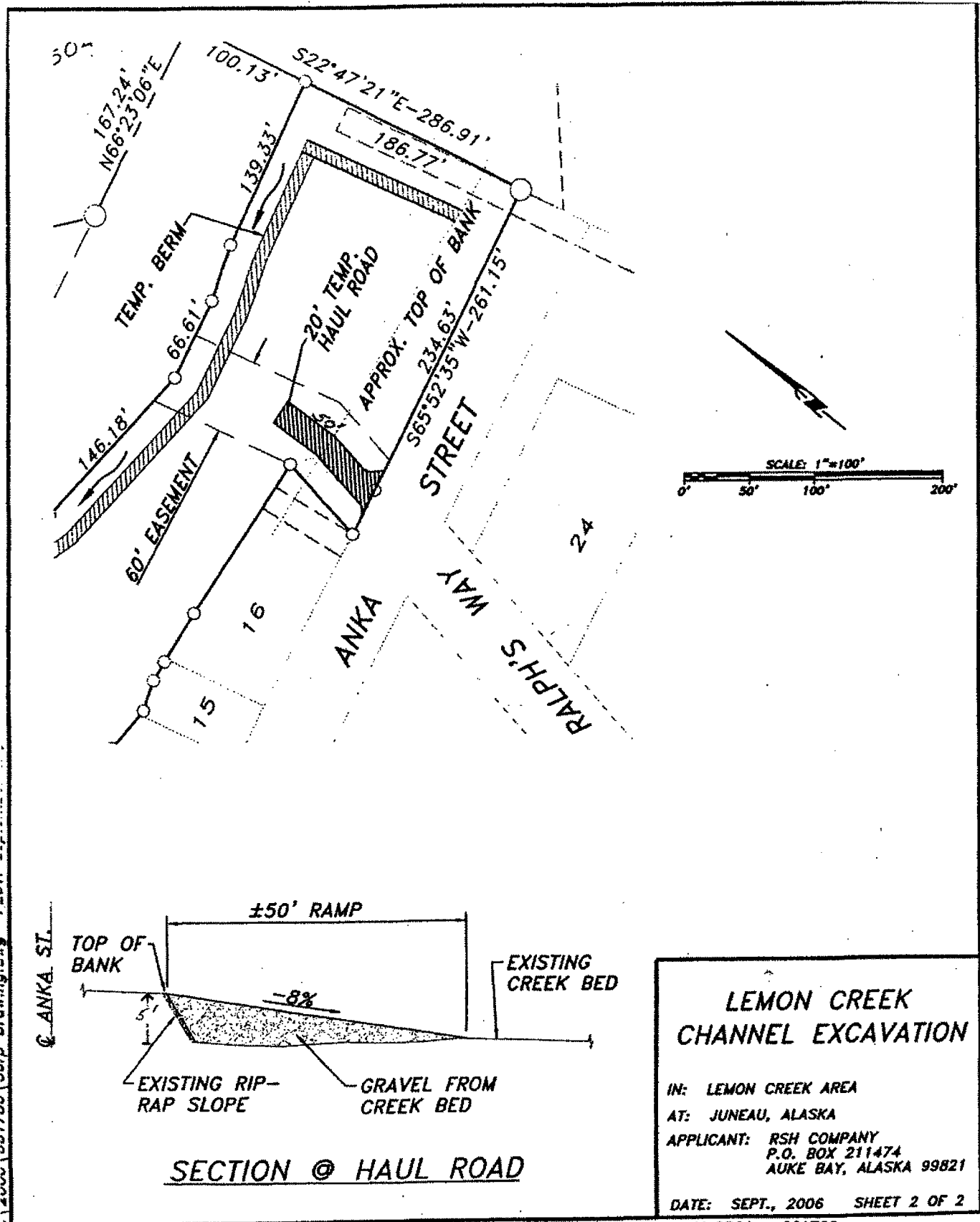
LEMON CREEK CHANNEL EXCAVATION

IN: LEMON CREEK AREA
AT: JUNEAU, ALASKA
APPLICANT: RSH COMPANY
P.O. BOX 211474
AUK BAY, ALASKA 99821

DATE: SEPT., 2006 SHEET 1 OF 2
R&M PROJ.: 061786

Ralph Horecny
Lemon Creek
10/24/06

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Sheet 4 of 5



FRANK H. MURKOWSKI, GOVERNOR

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

OFFICE OF PROJECT MANAGEMENT AND PERMITTING
302 GOLD STREET, SUITE 202
JUNEAU, ALASKA 99801-1127
PHONE: (907) 465-3562/FAX: (907) 465-3075

**NOTICE OF APPLICATION
FOR
CERTIFICATION OF CONSISTENCY WITH THE
ALASKA COASTAL MANAGEMENT PROGRAM**

Notice is hereby given that a request is being filed with the Office of Project Management and Permitting for a consistency determination, as provided in Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended [16 U.S.C. 1456(c)(3)], that the project described in the Corps of Engineers Public Notice No. POA-1983-20-N, will comply with the Alaska Coastal Management Program and that the project will be conducted in a manner consistent with that program.

This project is being reviewed for consistency with the Alaska Coastal Management Program. Written comments about the consistency of the project with the applicable ACMP statewide standards and district policies must be submitted to the Office of Project Management and Permitting. For information about this consistency review, contact OPMP at (907) 269-7470 or (907) 465-3562, or visit the ACMP web site at <http://www.gov.state.ak.us/gdc/Projects/projects.html>.

Attachment 1

FRANK H. MURKOWSKI, GOVERNOR

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF WATER

401 Certification Program

Non-Point Source Water Pollution Control Program

**NOTICE OF APPLICATION
FOR
STATE WATER QUALITY CERTIFICATION**

Any applicant for a federal license or permit to conduct an activity that might result in a discharge into navigable waters, in accordance with Section 401 of the Clean Water Act of 1977 (PL95-217), also must apply for and obtain certification from the Alaska Department of Environmental Conservation that the discharge will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. By agreement between the U.S. Army Corps of Engineers and the Department of Environmental Conservation, application for a Department of the Army permit to discharge dredged or fill material into navigable waters under Section 404 of the Clean Water Act also may serve as application for State Water Quality Certification.

Notice is hereby given that the application for a Department of the Army Permit described in the Corps of Engineers' Public Notice No. POA-1983-20-N, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

After reviewing the application, the Department may certify that there is reasonable assurance that the activity, and any discharge that might result, will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. The Department also may deny or waive certification.

Any person desiring to comment on the project with respect to Water Quality Certification may submit written comments within 30 days of the date of the Corps of Engineer's Public Notice to:

Department of Environmental Conservation
WQM/401 Certification
410 Willoughby Avenue
Juneau, Alaska 99801-1795
Telephone: (907) 465-5321
FAX: (907) 465-5274

Attachment 2